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# **Adoption of a Child by a Step-Parent or Relative**

## **The Child Welfare Act, 1978, as amended**

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Ontario

Ministry of  
Community and  
Social Services


Children's  
Services  
Division

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## INTRODUCTION

This paper introduces you to the provisions of The Child Welfare Act, 1978 regarding step-parent and relative adoptions, and to those Rules which govern practice and procedure in the Provincial Courts (Family Division).

It is your responsibility to ensure that all requirements of the law are met.

Copies of the consolidated Child Welfare Act, 1978, (incorporating Regulations made under the Act and Rules of the Provincial Courts (Family Division)) may be ordered from:

Ontario Government Bookstore  
880 Bay Street  
Toronto, Ontario  
Tel.: 965-2054

The Child Welfare Amendment Act, 1979 (Bill 162) and O. Reg. \_\_\_ amending the Rules of the Provincial Court (Family Division) are available in the Ontario Government Bookstore. Forms necessary to complete an adoption may be obtained from a legal stationer.





## **Preamble**

Prior to June 15, 1979 the adoption of a child by a relative or step-parent could not be finalized without the recommendation of the Director of Child Welfare, based on a favourable homestudy conducted by the Children's Aid Society having jurisdiction in the area in which the applicant adopters resided.

The Child Welfare Act, 1978, proclaimed June 15, 1979, exempts step-parents and selected relatives of the child from the homestudy requirement, subject to the Court's over-riding discretion to adjourn the Hearing of the adoption application and order a homestudy if in the circumstances of a particular case the Judge deems the investigation advisable.

A child who is being adopted by a relative or step-parent within the statutory class does not have to be placed through a Children's Aid Society, licensed agency or licensed individual, nor is the six month adoption probation period a condition precedent to the adoption order. The adopting parents simply make application to the Provincial Court (Family Division) where they reside, filing the documentation required by the Act and the Rules in support of an adoption order. A separate application is required for each child for whom an adoption order is sought.

## **Who Constitutes a 'Relative'?**

Section 59(1)(c) of the new Act defines 'relative' of the child as a grandparent, aunt or uncle, related to him by blood or by marriage. A sister or brother of the child is not a 'relative' encompassed by the statutory class, nor is an unmarried parent of the child. Thus, the adoption of a child by his sibling or unmarried parent will require the services of a Children's Aid Society, licensed adoption agency or person licensed for the purpose of the specific adoption placement.

## Consents to the Adoption

The following persons must give written consent to the adoption:

- 1) each parent of the child, as defined by s69(1) of The Child Welfare Act, 1978, as amended s69(2)
- 2) the child, if he is over seven years of age s69(6)
- 3) any person other than a parent who had lawful custody or control of the child when the child was relinquished for adoption s69(2)
- 4) the spouse of the adoptive applicant, if the applicant and his spouse are not applying jointly for the adoption order. s74(5)
- 5) the child's spouse, if the child is married.

## Waiting Period for Taking Consents

The consent of a parent cannot be taken until the child is a full seven days old. s69(2)

## Witnessing Consents

The consent of a child, parent or person with lawful custody or control of a child must be witnessed by an employee of a Children's Aid Society authorized by the society for the purpose. Rule 63(1)

### **The Out-of-Province Parent**

If the person from whom consent is required resides outside Ontario (but within Canada or the U.S.A. or the British Isles) the adoption agency or licensed individual should contact the Operational Support Unit, giving the person's last known address. The Children's Services Division will contact its provincial counterpart in an attempt to obtain proper execution of the consent.

### **The Special Case of the Minor Parent**

Where a parent or person with lawful custody or control of the child is under eighteen years of age, the consent shall be accompanied by the report of the Official Guardian in Form 31 stating that the Official Guardian is satisfied that the consent reflects the true informed wishes of the person giving the consent.

Rule 63(2)

The name of the Official Guardian's authorized representative in the community in which the minor parent resides may be obtained from the Clerk of the Provincial Court (Family Division) in your area or from the Office of the Official Guardian, 180 Dundas Street West, 6th Floor, Toronto, Ontario. Tel.: (416)-965-1837.

### **Cancelling Consent**

Any person who gives consent to the child's adoption may cancel it within 21 days. The cancellation must be in writing, witnessed by authorized staff of a Children's Aid Society and accompanied by an Affidavit of Execution sworn by the person witnessing the cancellation.

s69(2)

## **Withdrawing Consent After 21 Days**

If a person who has given consent to the child's adoption wishes to cancel it after the 21 days permitted for cancellation, he must make application to the Court for an Order permitting withdrawal of the consent. The application is barred if the child has been placed with his prospective adopters, and as long as he remains in their care. The Court will make the Order only if persuaded that it is in the best interests of the child in the circumstances to do so. The decision may be appealed.

s69(9)  
s69(10)

## **Requesting the Court to Dispense With a Consent**

The necessity for a motion dispensing with a particular consent to the child's adoption may arise in one of two situations. The most common situation is the inability to locate a particular person whose consent is required under the Act. The other less common situation is a refusal of a person who is available to consent to the child's adoption in circumstances where it is in the child's best interest that he be placed for adoption. An order dispensing with a particular consent, if not overturned on appeal, is final.

For procedure on motions refer to Ontario Regulation 386/79 under The Provincial Courts Act (Rules of the Provincial Courts (Family Division)).

## **Probationary Term**

The six month period of residence in the adoptive home which is a condition precedent to the adoption order if a child is adopted by a stranger does not apply if the child is being adopted by the spouse of his parent, or by his aunt, uncle or grandparent. However, the Court may insist that the child reside for a probationary time with his proposed adopters, if the circumstances of the case warrant.



## **Jurisdiction of the Court**

Jurisdiction to make an adoption order is given to the Provincial Court (Family Division) or the Unified Family Court in the county or district where the proposed adopters or the child have their usual residence. Both the applicant and the child must be resident in Ontario, unless the child is the subject of an interim custody Order permitting him to leave Ontario with his adoptive family.

s1(c)  
s71(1), 72

s75(5)

## **Stale Applications**

Where an application for an adoption order is not heard by the Court within 12 months of its execution by the applicant it cannot be proceeded with unless the Court otherwise directs. Another application may be made in its stead.

s71(5)

## **Transfer of Proceedings to Another Court in Ontario**

Where the Court is satisfied that there is a preponderance of convenience in favour of hearing the application for adoption in another county or district it may transfer the proceedings to a Court in the other county or district within Ontario. The transfer may be ordered at any time after the application is filed, but must be complete before any hearing of the application.

s71(3)

## **Limits on the Court's Jurisdiction**

Unless there are special circumstances, the Court cannot make an adoption order in any of the following circumstances:

- where the applicant is under the age of 18 years or, in the case of a joint application by a married couple where either is under the age of 18 years,

s74(1)(a)



- where the applicant is unmarried, a widow or widower, a divorced person or a person living apart from his or her spouse, s74(1)(b)
- where the child for whom an adoption order is sought is over eighteen years of age, s74(1)(c)
- where the child has been married,

The prohibitions enumerated above do not apply if application for the child's adoption is made by a spouse of either of the child's parents. s74(3)

The Court cannot make an adoption order at all if a joint application for the child's adoption has been made by persons who are not married to each other. s74(4)

### **Court's Discretion to Order Homestudy Report**

The Court may direct that a homestudy of the applicants be undertaken if in the opinion of the Judge, such investigation is advisable. The homestudy report will be submitted to the Director of Child Welfare and form the basis of his recommendation to the Court that an adoption order should or should not be made.

The homestudy, may be conducted by the Children's Aid Society with jurisdiction in the area where the applicants reside, or by any other person who has received prior approval from a Director of Child Welfare or local director of a Children's Aid Society s75(5))

## **Making Application**

### Generally

An adoption proceeding is "commenced" by filing an application in the office of the clerk of the applicable Provincial Court (Family Division)

Rules 11, 1, 57

In an adoption proceeding, the child to be adopted may be identified in any document in the proceeding by his given names in full followed by the first letter of his surname and his birth registration number.

Adoptive applicants may be identified in any document other than the adoption order by the first initial of their surname, where such mode of identification is necessary to preserve confidentiality of identity.

A separate application is to be made for each child for whom an adoption order is sought.

Rule 61

## **Completion of Forms**

### Consistency of Content:

The following data must be consistent in all documentation submitted to the Court in support of the adoption application:

- the child's pre-adoptive name as recited in the statement of live birth or alternatively the child's given names in full, the first initial of the surname and the birth registration number
- the child's birthdate.
- the child's place of birth

- name(s) of the birth parents in full
- birthdates of the parents
- address for service of documents.
- the marital status of the adoptive parents, if the application for the child's adoption is made jointly, or if a single application is made by a person who is married.

#### Amendments/Alterations:

Any alteration, addition or deletion to a document is to be initialled by the person signing, as well as the witness or Commissioner.

After the documents have been filed with the Court, any alteration requires the Court's permission. Request for permission is brought before the Court by motion.

#### If the child is a member of a band within the meaning of the Indian Act, R.S.C. 1970, CI-6:

Please attach a covering letter to the adoption application so indicating.

After the adoption order is made the Registrar under the Indian Act is entitled to a certified copy of the adoption order and your covering letter will alert the Court staff person of the child's status.

s80(2)

#### **Documentation to be filed with the Court in support of an Adoption Order - Adoption by Relative or Step-Parent**

1. Application for Adoption - Form 20E and where applicable

Rule 57(1)

- a) certified copy of applicant's marriage certificate or other proof of marital status (e.g. oral or affidavit evidence)

s74(4)

- b) if applicant's spouse is not joining in the application, the consent of the spouse - Form 27 Rule 62(f)
- or
- a certified copy of Order dispensing with the spouse's consent - Form 34 ss74(5); 69(5)
2. Notice of Hearing - Form 21 (original) Rule 57(2)
3. Affidavit of Service - Form 24 (original) where service applicable and effected. Rule 59(1)
4. Certified copy of Statement of Live Birth of the child, or its equivalent where the child was born outside Ontario. Rule 62(a)
5. Consent to Adoption of each parent (defined) of the child - Form 27 s69(1)(2)  
C.L.R.A. s8(1)
- or
- certified copy of Order dispensing with any particular consent - Form 34 s69(7)(8)
6. Consent to Adoption of any person (other than a parent who had lawful custody or control of the child when the child was relinquished for adoption - Form 27 s69(2)  
Rule 62(c)(ii)
- or
- a certified copy of the Order dispensing with that person's consent. s69(7)(8)

7. Consent to Adoption - Child - Form 28 (if child is seven or more years of age)

Rule 62(e)

or

a certified copy of order dispensing with the child's consent.

s69(6)(13)

8. Affidavit of applicant stating that he/she has no knowledge of any outstanding custody or access orders pertaining to the child, other than those filed with the adoption applicant, or of any other 'parent' or person having lawful custody or control of the child, other than those persons whose consents to the adoption are filed with the adoption application, or whose consents have been dispensed with by Court order.

s71(4)  
Rule 62(d)(iii)

9. Other affidavits/documentation appropriate to particular circumstances of the case:

ss75(5); 82

e.g., where applicant is widowed, a certified copy of death certificate of spouse

s74(1)(b)

e.g., where applicant is divorced and has not remarried, a certified copy of his/her decree absolute

s74(1)(b)

e.g., where applicant is separated, a photocopy of any domestic contract (e.g., separation agreement) made in accordance with Part IV of The Family Law Reform Act, 1978, S.O. 1978, c. 2, supported by evidence identifying the document.

s74(1)

e.g., if the person from whom a consent is required is dead, a certified copy of the death certificate.

e.g., if the parent or person having lawful custody or control of the child is under eighteen years of age and giving consent to the adoption, the Report of the Official Guardian - Form 31. A Statement of Account may be attached to the aforementioned Report. It is to be initialled by the presiding judge. Once initialled the Statement is to be returned to the applicant(s) or the person(s) acting on his or her behalf for submission to the Official Guardian

s69(13)  
Rule 63(2)



e.g., where the Court has so ordered, the Recommendation of Director - Form 29 or Recommendation of Local Director - Form 30

ss75(5); 82  
Rule 62(g)

e.g., where the Court has so ordered, the Report on the Adjustment of the Child in the home of the applicant(s).

ss75(5), 82  
Rule 62(g)

e.g., certified copy of any known outstanding custody or access orders pertaining to the child

Rule 62(c)(i)

10. Adoption Order - Form 34, prepared for signature of the presiding Judge.

Rule 72(1)

#### Optional

Application for Substituted Registration on Adoption - Form 6, see V.S.A. s24(2).

New Statement of Live Birth for the child - Form 2, see V.S.A. s24(2).

**Note:** These forms should only be present where the child was born in Ontario. They will accompany the certified copy of the adoption order to be sent to the Registrar General of Vital Statistics - see C.W.A. s80(2) and V.S.A. s24.

#### **Ensuring Flexibility**

The Rules caution against undue rigidity and technical formality, and give the Court considerable discretion to waive compliance with the Rules in the circumstances of a particular case. See particularly Rules 4, 5 and 6.

## Obtaining a Date for Hearing

The application initiating the adoption proceeding must be sealed by the Clerk of the Court. The Clerk will set a date for the Hearing, enter the date and time on the Notice of Hearing, sign the Notice and seal both the Notice and the application with the Court seal.

The Court file number assigned to the application must be entered on all documentation filed in support of the application.

## The Hearing

The application for an adoption order is heard and determined in private.

s71(2)

## Evidence

### Affidavits

The Court may accept evidence by affidavit if the affidavit is confined to facts within the personal knowledge of the person making the affidavit.

s71(4)

### 'Best Interest' Evidence

'Best interest' evidence is to be considered in adoption proceedings as follows:

- to assist the Court in determining whether it should dispense with the requirement of any consent to the adoption,
- to assist the Court in determining whether it should allow a consent to be withdrawn by the person giving it,
- to assist the Court in determining whether it should make the adoption Order.

s69(7)

s69(9)

s76

'Best interests' evidence includes the following factors, in addition to all other relevant considerations placed before the Court:

- the mental, emotional and physical needs of the child, and the care and/or treatment appropriate to meet those needs,
- the child's opportunity to enjoy a parent-child relationship, and to be a wanted and needed member within a family structure,
- the child's mental, emotional and physical stages of development,
- the effect upon the child of any disruption in his sense of continuity,
- the merits of any plan proposed by the agency that would be caring for the child compared with the merits of the child returning to or remaining with the parent,
- the child's views and preferences, where such views and preferences can reasonably be ascertained,
- the effect upon the child of any delay in the final disposition of the proceedings,

s1(b)

### **Appointment of a Guardian ad litem for the child**

If the child who is the subject of the adoption application is under the age of 18 years, the Court may appoint a person to act as the child's guardian ad litem if in the Court's opinion such appointment is required to protect the legal interests of the child. The Court may make any order as to the costs of the guardian ad litem that is appropriate in the circumstances.

s71(6)

### **The Court's Specific Duty**

Before it makes an adoption Order the Court must be satisfied that every person who has given consent understands the nature and effect of the adoption order and that the order will be in the best interests of the child.

s76

Where the child is 7 or more years of age the Court must inquire into the capacity of the child to appreciate the nature of the adoption application and must, where practicable, hear the child.

s77

### **Changing the Child's Surname**

When making an adoption order the Court may order that the adopted child retain the surname by which he was known prior to his adoption or that he assume the surname of either or both of the adopting parents. The Court may also in its discretion change the given name or names of the child as the adopting parents desire.

In the case of a child 14 or more years of age the Court cannot make an order to change the child's given name or the surname without the written consent of the child.

s78

### **The Adoption Order**

As soon as the Order for the child's adoption is pronounced in Court and endorsed by the Judge, it takes effect.

The draft adoption order should be prepared in advance and submitted to the presiding Judge for his signature at the conclusion of his oral pronouncement of the order for adoption.

### **Finality of the Adoption Order**

Subject to the appeal provisions of The Child Welfare Act, 1978, an order granting an adoption is final and irrevocable.

s83

### **Status of the Adopted Child**

At the date of the adoption order, the adopted child becomes the child of his adoptive parents and ceases to be the child of the person who was his parent before the adoption order was made. All rights and responsibilities of legal guardianship that vested in any adoption agency pending the final adoption order now vest in the child's adopters.

s86(1)(2)

Interests in property or other legal rights accruing to the adopted child that have indefeasibly vested before the date of the adoption order are not affected by the adoption, nor is any interest in a property right that vested before the coming into force of The Child Welfare Act, 1978.

s86(4)

Birth relationships continue only for the purpose of the laws relating to incest and prohibited degrees of marriage. For example, an adopted child may not marry anyone within his birth family who falls within the prohibited degrees of consanguinity.

s86(5)

### **Transmission of the Order**

Within 30 days of the adoption hearing the Court will forward the original Order to the adopting parents, and a certified copy to the Director of Child Welfare and the Registrar General. Where the adopted child is a member of a Band within the meaning of the Indian Act, (Canada), a certified copy will be forwarded to the Registrar under that Act.

s80(2)



## Sealing of Documents

Subject to the adoption disclosure provisions of The Child Welfare Act, 1978, the documents filed in support of an application for adoption are sealed up and filed with the Court that made the adoption order. The documents are not to be opened for inspection unless a Director of Child Welfare allows, or the Court orders otherwise.

s80(1)

## Miscellaneous Matters

### Legal Representation

A party may be represented in a proceeding by any of the following:

1. a barrister and solicitor
2. a student-in-law while under articles, unless the Court orders otherwise
3. with the permission of the Court, a law student who is enrolled in a university approved by The Law Society of Upper Canada and who is engaged in a legal clinic program under the supervision of a barrister and solicitor, or any other person.

Rule 9

(1) A party acting by a solicitor or agent may change his solicitor or agent or may act in person by filing a notice of change of solicitor or agent containing the consent of the new solicitor or agent to act.

(2) A party acting in person may appoint a solicitor or agent by filing a notice of appointment containing the consent of the solicitor or agent to act.

(3) A notice filed under sub-rule 1 or 2 shall be served on every other party.

Rule 33

Re-Registration of the Birth of an Adopted Child  
under The Vital Statistics Act

Section 24 of The Vital Statistics Act, R.S.O. 1970 c.483 provides that where a child, born in the Province of Ontario, has been adopted, the Registrar General may by Order, set aside the original birth registration and file a new registration of birth in accordance with the facts contained in the Adoption Order.

This is called re-registration or substituted registration. It is optional, may be undertaken only after the Court has made a final adoption order with respect to the child, and only if the child has been born in Ontario.

If the adoptive parents wish to have the child's birth record changed so that the new surname and/or any changes in the child's given name(s) appear on the birth record, the Society, agency or licensed individual involved in the placement should prepare or assist in the preparation of the necessary forms.

Blank forms may be obtained from the Office of the Registrar-General, Ministry of Consumer and Commercial Relations, MacDonald Block, Queen's Park, Toronto.

If you have any questions regarding the substituted registration procedure, contact:

Manager of Operations  
Office of the Registrar-General  
Ministry of Consumer and Commercial Relations  
Queen's Park, Toronto  
M7A 1Y5  
Telephone: (416) 965-2274  
Attn: W. E. Mitchell

## Prohibition Against Payments For Adoptions

Other than the payment of legal expenses incurred in connection with an adoption, no money or money's worth may change hands in relation to:

- o the adoption or proposed adoption of a child
- o the giving or signing of any consent to a child's adoption
- o the transfer of custody or control of the child with a view to adoption
- o the conduct of negotiations or the making of arrangements with a view to a child's adoption.



